

Congress of the United States
Washington, DC 20515

May 17, 2021

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Becerra,

We write to express concern with the proposed rule, entitled “Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services,” which establishes standards for family planning providers seeking funding authorized by Title X of the Public Health Service Act. The rule overturns the Trump Administration’s 2019 Title X Rule, also known as the “Protect Life Rule.” We wish to bring to your attention two ways that the proposed rule violates federal law, and we urge you to withdraw it.

First, the proposed Title X rule violates Section 1008 of the underlying Title X statute, which states, “None of the funds appropriated under this subchapter shall be used in programs where abortion is a method of family planning.”¹ The late Congressman John Dingell (D-MI), the principal sponsor of Section 1008, confirmed the Congressional intent of the Title X program on the House floor. He explained, “*With the ‘prohibition of abortion’ amendment – Title X, section 1008—the committee members clearly intend that abortion is not to be encouraged or promoted in any way through this legislation. Programs which include abortion as a method of family planning are not eligible for funds allocated through this act.*”² The Title X abortion prohibition is intentionally broad: it is true that Title X funds may not be used to provide or promote abortion as a method of family planning, but Title X funds may also not fund any *program* where abortion is used as a method of family planning.

As written, the Title X proposed rule operates exactly opposite to the requirements of the Title X statute in two ways. First, by mandating abortion referrals, the proposed rule effectively requires grantees to encourage or promote abortion in order to receive funding. Second, by permitting the “co-location” of abortion clinics and Title X clinics in the same facility, the Title X proposed rule provides funding to clinics that also perform abortions. The co-location portion of the Title X proposed rule contradicts the spirit and letter of the law: it allows abortion clinics to reallocate financial resources to advance their abortion agenda at the taxpayer’s expense. Title X service sites must be both physically and financially separate from abortion providers to ensure that the federally funded Title X services comply with the law.

History confirms that, as currently written, the proposed rule will make Title X a funding stream for the abortion industry. Under a similar Title X Rule put in place in 2000 and replaced by the Protect Life Rule, the Title X program was Planned Parenthood’s second largest federal funding stream. Between 2013-2015, Title X funds made up over \$170 million of Planned Parenthood’s expenditures.³ The Administration must not finalize a rule that violates the clear meaning of Section 1008 through these illegal referral and co-location provisions.

¹ [42 U.S. Code § 300a-6](#)

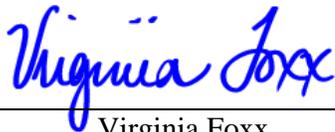
² “Exclusion of Abortion as Method of Family Planning.” Congressional Record. November 16, 1970.

³ Government Accountability Office. “Health Care Funding: Federal Obligations to and Expenditures by Selected Organizations Involved in Health-Related Activities, Fiscal Years 2013-2015.” March 6, 2018. <<https://www.gao.gov/products/gao-18-204r>>

Second, the proposed Title X rule violates federal law protecting the rights of health care providers who choose not to refer for abortion. It requires grantees to offer abortion counseling and referrals to pregnant clients, but this is not a requirement that the federal government may legally impose upon health care providers. The Weldon Amendment makes it illegal for the federal government to discriminate against health care entities that do not refer for abortion. It has been federal law since fiscal year 2005 and was most recently enacted into law through the Consolidated Appropriations Act, 2021.⁴ The Weldon Amendment acknowledges that governments have no business imposing abortion mandates on health care entities: no one should be forced to participate in abortion. While the preamble of the proposed Title X rule notes that grantees with conscience objections will not be required to counsel and refer for abortion, this exception is not present in the text of the proposed rule itself.

As stated above, the Title X proposed rule illegally funds programs where abortion is a method of family planning, and it violates the rights of health care providers. For this reason, we urge you to withdraw it. Thank you for your attention to this serious matter.

Sincerely,



Virginia Foxx
Member of Congress



Ron Estes
Member of Congress



Christopher H. Smith
Member of Congress



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Member of Congress



Joe Wilson
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⁴ Consolidated Appropriations Act, 2021. Public Law No: 116-260



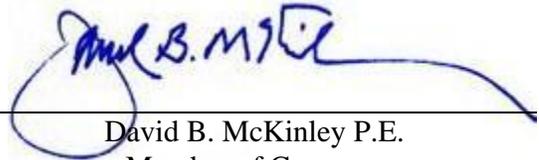
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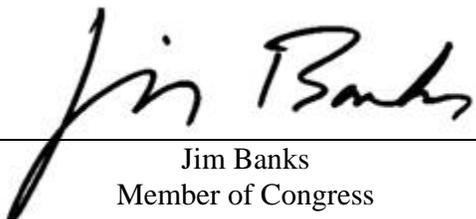
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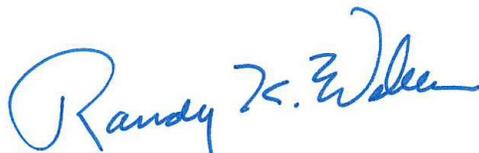
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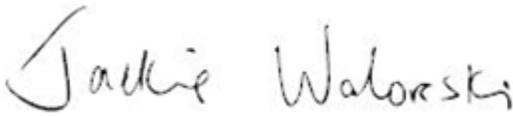
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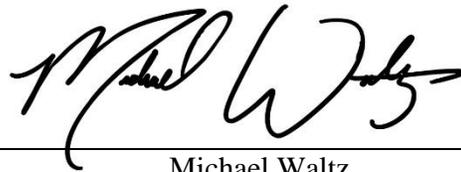
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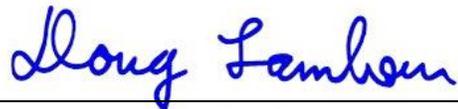
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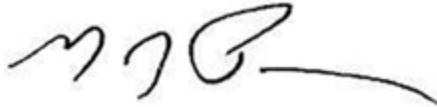
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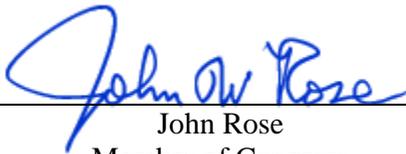
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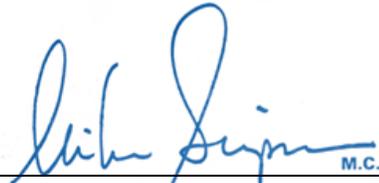
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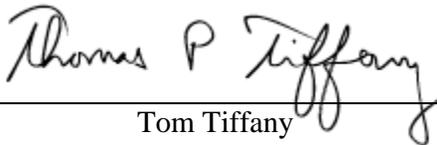
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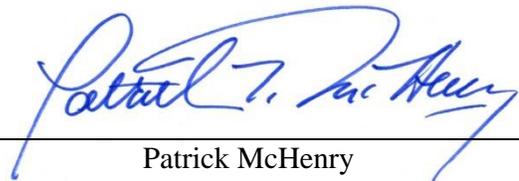
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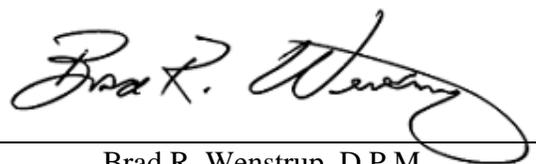
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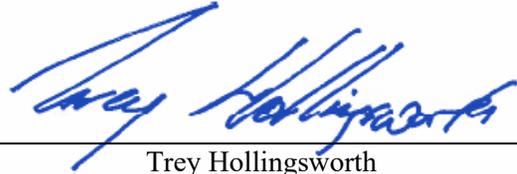
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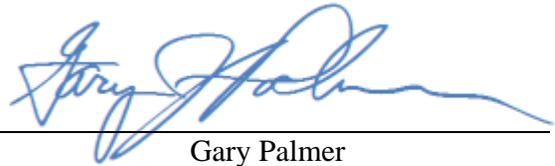
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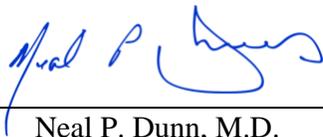
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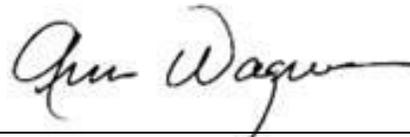
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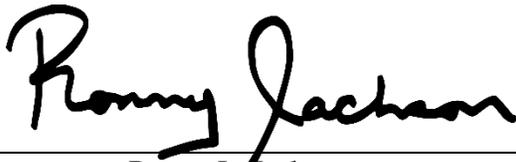
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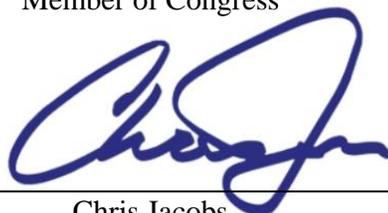
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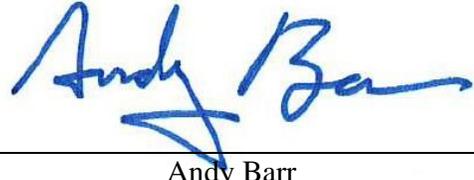
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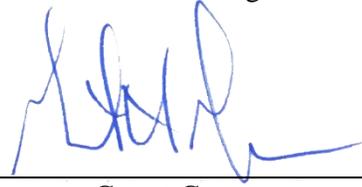
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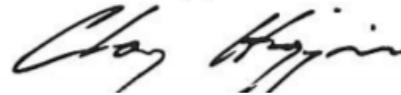
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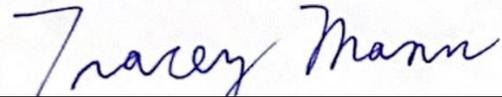
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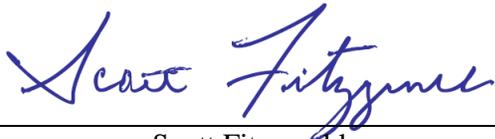
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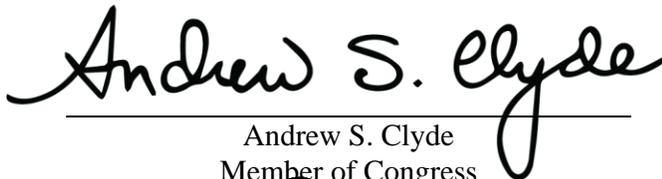
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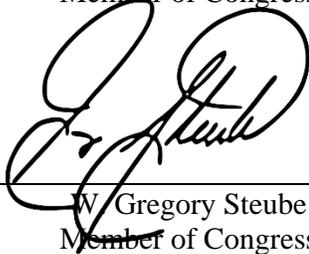
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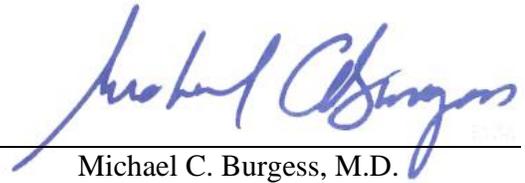
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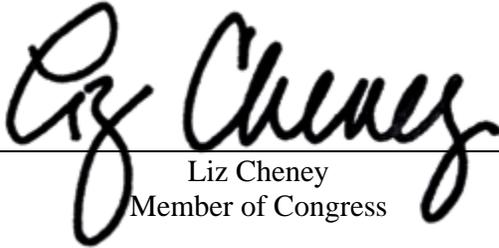
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